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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 966

CHARLES JOBIN, *Appellant,*

v.

THE STATE OF ARIZONA

APPEAL
FROM THE SUPREME COURT OF ARIZONA

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
Attorney for Appellant

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APPELLANT'S BRIEF.

Opinions Below

The opinion of the Supreme Court of Arizona is reported in 118 P. 2d 97 and is printed in the Record. (R. 46) It appears also as an appendix to the printed jurisdictional statement filed herein. The trial court did not write an opinion.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the state court of last resort (Arizona Supreme Court) was rendered and entered of record on October 20, 1941. (R. 55) A motion for rehearing was duly and timely filed. On December 11, 1941, the Arizona Supreme Court overruled the motion for rehearing. (R. 55) The judgment of said highest court became final on December 11, 1941. The petition for appeal was duly filed and presented within three months from December 11, 1941. This Court noted "probable jurisdiction" on March 16, 1942. R. 62.

The Statute

The legislation, constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Casa Grande, known as ordinance number 101. Material parts of said ordinance read as follows:

> "Section 1. It shall be unlawful for any person . . . to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance . . . and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. . . .
>
> "Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande. . . . All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

(See Record, page 2.) The entire ordinance appears in the record at pages 2 to 8.

Statement

FACTS

The facts in this case are simple and undisputed. Several witnesses testified for the State concerning the activity of appellant and their dealings with him.[1]

The appellant also testified. (R. 30) The facts as established by the evidence may be fairly summarized as follows, to wit:

Appellant is a regularly ordained minister of Jehovah God, and is known as one of Jehovah's witnesses. On August 15, 1940, he was going from house to house in the City of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various Biblical records on a phonograph, with approval of the householder, and by distributing printed books, pamphlets and leaflets which set forth his views as to the meaning of the Bible prophecies. The method of distribution of these printed publications was as follows: At conclusion of his playing of a phonograph record, appellant would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature. Whenever a householder did not desire to receive a book or booklet he left a small leaflet summarizing some points of the Bible message which he preached. In at least two cases he delivered a copy of one of the printed books and received from each of the householders a contribution of twenty-five cents. Appellant admitted that he was offering and delivering said literature in like manner regularly in the City of Casa Grande and elsewhere, and also that in some cases when householders were not in posi-

[1] A. L. Hoffman (R. 14), Connie Richerson (R. 15), Mrs. Hazel Irene Bonebrake (R. 20), Charles Richardson (R. 23), and Guy J. Baker. R. 27.

tion to make a money contribution and desired and promised to read the literature carefully, to such persons he gave a book or a pamphlet free of charge. Appellant also testified that he did this work because he believed it was his God-given duty to do so. He admitted that not only had he not applied for a license under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do the work and refused to purchase a license. On behalf of appellant it was contended that he could not be compelled to take out a license as a condition precedent to performing such work in the manner above described because (a) it violated his right of freedom of press, and (b) his freedom to worship Almighty God, as guaranteed to him by the Federal Constitution.

Appellant, one of Jehovah's witnesses, is an ordained minister of Almighty God, preaching the gospel of the Kingdom of Jehovah God, The Theocracy, and as such he is consecrated to bear public witness thereto. At the time of his arrest he was preaching the gospel of God's Kingdom from house to house (Acts 20:20), following in the footsteps of Christ Jesus and His apostles (1 Peter 2:9, 21), by distributing Biblical literature in the manner above described.

Appellant's sole purpose and objective in thus distributing said literature was to preach said gospel message and thus to provide to others the wholesome and beneficial information contained in said literature. His objective was not a commercial one; he was not doing the work for pecuniary gain for himself or for the publishing organization that provided said literature for him to circulate. His inviting and accepting money contributions from willing recipients of the literature was definitely *incidental* to appellant's primary aim and purpose.

The aforesaid literature thus distributed by appellant and by all other of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being

fulfilled, and showing how, according to the Bible, the time is near when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to all persons on earth who are accounted worthy to survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said publications are, in part, admittedly, a vigorous attack upon religion as practiced today and at all times since man has been upon earth, but ALSO such contents clearly set forth the *true distinction* between all religion, on the one hand, and, on the other hand, the true worship (or service) of Almighty God and His Son Christ Jesus, thereby exposing religion as a snare to be shunned by the upright, and proving that *no* religion is in any way related to or a necessary part of the true worship of Almighty God and His King Christ Jesus. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth.

The public method of preaching the gospel employed by appellant is following exactly in the footsteps of the Lord Jesus Christ, who also taught *publicly* and from house to house.—Luke 8:1; Acts 20:20.

The undisputed evidence showed that appellant is not a peddler of goods, wares or merchandise in the sense ordinarily understood or intended by the terms of the ordinance, because he is an ordained minister of Jehovah God, preach-

ing the gospel from house to house as well as on the public ways.

The Supreme Court of Arizona in its opinion also stated the facts substantially as above. R. 46.

HISTORY OF PROCEEDINGS BELOW

Appellant was arrested and charged in the municipal court with violation of the aforesaid ordinance, and on trial was convicted for a violation thereof. He duly appealed to the Superior Court of Pinal County, Arizona. (R. 44) In due time his said case was tried *de novo* to a jury before Levi S. Udall, Judge of the Superior Court, resulting in a verdict of guilty and assessment of a fine of $50, in default of which he was ordered committed to jail for fifty days, and thereupon duly and timely appealed said conviction to the Supreme Court of Arizona. (R. 46) Errors pertaining to his conviction were duly assigned in the Supreme Court of Arizona, according to the rules of said court, and the matter was duly and regularly heard, and on October 20, 1941, the judgment of the Superior Court of Pinal County was affirmed. (R. 55) Thereafter appellant's motion for rehearing was overruled on December 11, 1941. R. 55.

Federal Questions Presented

In the municipal court, by motion to dismiss and in the Superior Court by motion to dismiss and motion for instructed verdict filed at the close of all the evidence (R. 38), and in the Supreme Court of Arizona by assignments of error and brief, appellant duly and timely raised in the manner required by law certain Federal questions; contending in each of said motions that the ordinance in question as construed and applied deprived him of his rights of freedom to worship ALMIGHTY GOD as by Him commanded in His written Word and according to dictates of appellant's conscience, and of freedom of speech and freedom of press, contrary to the "due process" clause of the

Fourteenth Amendment to the United States Constitution. See Opinion, R. 46.

Each of these contentions was overruled by the municipal court, by the Superior Court, and by the Arizona Supreme Court. The Supreme Court of Arizona finally passed upon each of said Federal questions or assignments of error attacking the validity of the ordinance and held the legislation valid and constitutional as construed and applied. (R. 46) Each of the aforesaid grounds presenting Federal questions has been brought to this Court by specific assignments of error contained in the petition for appeal duly and timely filed herein.

Specification of Errors to Be Urged

The Supreme Court of Arizona committed reversible error in failing to hold that—

1. The ordinance as construed and applied by the courts below unreasonably and unlawfully denies and abridges appellant's right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

2. The ordinance as construed and applied by the courts below unreasonably and unlawfully denies and abridges appellant's right of freedom of press, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Points for Argument

ONE

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, JEHOVAH, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

A proper and judicial construction of the ordinance in question would necessarily have excluded appellant's activity from the terms thereof, because appellant was admittedly an ordained minister of Almighty God, preaching the gospel by distributing literature and simultaneously receiving money contributions.

The opinion of the court is to the effect that had appellant not received money contributions he would not have been within terms of the ordinance, and that by reason of "making sale" of literature he was properly constituted a

peddler, subject to payment of the license tax provided for "peddling" within the city, and that therefore his constitutional rights of freedom of worship and freedom of press were not denied him in the circumstances of this case.

The liberty of the people to exercise their right of freedom of speech, of press and of worship depends not upon whether money contributions are received to defray the expense of such activity. As to the construction of the ordinance and what activity the word "peddler" does or does not include, this Court is not concerned. The Arizona Supreme Court's interpretation is final in that regard. However, this rule does not enjoin this Court from determining whether the ordinance as construed by the Arizona Supreme Court violates the Federal Constitution.

If it is found that the admitted exercise of freedom of press and of worship is directly and unlawfully burdened by this ordinance, it is the duty of this Court to reverse the judgment of the courts below. *Henderson* v. *New York,* 92 U. S. 219, 237.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to law and reasoning expressed in the applicable opinions of this Court. The Arizona Supreme Court has *grafted* a new theory, entirely foreign to American life, onto constitutional law of the nation—which should be removed and eradicated by this Court before it reaches more devastating proportions and consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., if money was accepted for the literature distributed that such transaction took the matter beyond the reach of the shield of the Federal Constitution's Fourteenth Amendment.

Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against ordinances such as this if he *gave away* printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The

claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one. Through it many have grown wealthy. They claim and are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, as the appellant here, by constantly and continuously bringing printed matter on subjects of great importance and benefit to the attention of the public through "press activity" is entitled to let those receiving such information aid in keeping the 'good work alive and going' by contributing a small sum with which to print more like literature.

It is a ridiculous stalemate to hold that one must 'go bankrupt' by forced "free" (i.e., *gift*) distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money contributed by some who accept literature is only *incidental* to appellant's main activity. It is a means to an end, to wit, further proclamation of the Kingdom message of Almighty God.

Manchester v. *Leiby*, 117 F. 2d 661, relied on by the Arizona Supreme Court, is not in point and does not govern here, because it concerned only an ordinance requiring "identification" and not a permit or license. That *Manchester* v. *Leiby* opinion is repugnant to the Constitutional and applicable opinions of this Court. (See *Herder* v. *Shahadi*, 14 A. 2d 475, where an identical ordinance was outlawed.) Denial of certiorari (61 S. Ct. 838) does not mean that this Court approved the reasoning or the holding of the First Circuit Court of Appeals. Cf. *Bowden et al.* v. *City of Fort Smith, Ark.*, No. 314 October Term 1941, certiorari *denied* Oct. 13, 1941 (62 S. Ct. 99), and thereafter on March 16, 1942, certiorari *granted*; see, also, *United States* v. *Carver*, 260 U. S. 482, 490.

An ordained minister of Jehovah God and of the Lord

Jesus Christ cannot be licensed to perform acts of worship (i.e., *service*) of the Creator. Furthermore, the ordinance does not mention or contemplate ministers. The constitutional "right" to serve Almighty God cannot be taxed or licensed. It is not a "privilege" merely, but an inherent right. Such *right* does not spring from the Constitution, is not *created* by the Constitution. Such existing inherent *right* of every inhabitant of this land is shielded by the Constitution against hostile invasion by the State and even by Congress.

As construed, the Casa Grande ordinance *licenses* acts of worship; that is to say, preaching the gospel by dissemination of Biblical information in printed form. To permit such taxing or licensing is authorizing and encouraging an unlawful joinder of "state and church".

The Arizona Supreme Court's straitened view of what constitutes an "ordained minister" and "preaching the gospel" prevents that court from discerning how appellant's acts are safeguarded under the protecting shield of the Federal Constitution against all sorts of encroachment by license, especially when the court below found that appellant was 'preaching the gospel as a regularly ordained minister'.

That court's straitened view seems to stem from the private opinion of its members the appellant's challenged activity is "commercial" simply because it is unlike commonly recognized practices of the religious clergyman.

As long as appellant's practice does not infringe the law of morals or the right of property of others, the judiciary as well as any administrative or legislative agency is absolutely estopped from invading the field of opinion and practice to say that a given activity is not in fact an act of worship protected under the constitutional shield.

ARGUMENT

ONE

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, JEHOVAH, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

Freedom to worship Almighty God according to dictates of one's own conscience and as commanded by the Creator in His written Word is one of the rights secured by the Fourteenth Amendment against abridgment by the state. *Cantwell* v. *Connecticut*, 310 U. S. 296.

The undisputed evidence is that appellant was and is an ordained minister of Jehovah God, and that his *way* of worshiping Almighty God is to preach the gospel from house to house and on the streets by distributing literature explaining God-given prophecies of the Bible.

Preaching of the gospel by him *in this manner* is not for the private, personal benefit of the individual so preaching, or the benevolent corporation printing the literature distributed by said individual. On the contrary, the purpose, aim and effect of his dissemination of such information through distributing said literature is to enlighten and benefit persons willing to receive and study that literature.

The undisputed evidence shows that no one connected with the printing or distributing of the literature receives or makes any private, pecuniary profit; and that the entire activity is strictly non-commercial, non-profit and non-competitive in nature and aim. And although money contributions are received by persons distributing the literature to

aid in defraying cost of producing and distributing more like literature, such acceptance of contributions is wholly and purely *collateral, incidental,* secondary.

The undisputed evidence shows that no profit or personal gain results, and much literature is given away free by the distributors on condition that recipients read and study same.

Neither appellee nor the courts can say that this is not a proper *way* to worship Almighty God. Jehovah God alone judges His servants, as it is written:

> "Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."
> THE BIBLE, Romans 14:4

Also, Thomas Jefferson, in his preamble to the Virginia Statute for Religious Freedom, correctly recites—

> "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty"

and then declares

> "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The foregoing true rule was quoted with approval in *Reynolds* v. *United States,* 98 U. S. 145, 162.

Also, in *Commonwealth* v. *Lesher,* 17 S. & R. 155, the Chief Justice of the Supreme Court of Pennsylvania said that the right of conscience is—

"A right to worship the Supreme Being according to the dictates of the heart. To adopt any creed or hold any opinion whatever on the subject of religion; *and to do or forbear to do any act* for conscience' sake, the doing or forbearing of which is not prejudicial to the public weal." [Italics added]

As long as the act of worship by an inhabitant of this land—be he a clergyman, or this appellant, or any other person—does not infringe the law of morals or the right of property of others, the judiciary or any administrative agency is precluded from invading the field of opinion and right practice to say that a given activity is not in fact an act of worship, or "preaching the gospel".

To "preach" means to proclaim a message.

"Preaching the gospel of the kingdom of God" means proclaiming to others the Scriptural truths of and concerning Jehovah God and His kingdom, The Theocracy, under Christ Jesus.

To be *ordained* thus to minister or serve merely means to be appointed, by the proper authority, to a position or office to perform duties specifically assigned. Jehovah's witnesses being selected by Almighty God, JEHOVAH, it follows that Jehovah is the authority who ordains the servant or minister, as it is written at Isaiah 42:1; Isaiah 43:10-12; Isaiah 61:1-3; John 15:16. Those and other Scriptures clearly state the commission of authority given by Almighty God through His Son Christ Jesus to persons on earth who are servants, or ministers, of Jehovah.

Since Jehovah's witnesses operate in a legal and orderly way through their corporate representative the Watchtower Society, they also possess an earthly ordination.

From the foundation of the United States this country has been recognized and declared by this Court to be "a Christian nation". *Holy Trinity Church* v. *United States*, 143 U. S. 457. This means that its people endeavor to follow in the footsteps of the Lord Jesus Christ. All followers of

the Lord are duty bound to obey the law of Almighty God and to follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) The Lord Jesus set the only example to follow when He said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written of Him that He went throughout every city and village teaching and preaching the kingdom of God. (Mark 6:6; Luke 8:1) See, also, Matthew 10:7, 12-14. Jesus and His apostles taught publicly.—Luke 13:26; Acts 20:20; see also Proverbs 1:20, 21.

A minister of Jehovah God, following in the footsteps of Jesus, is a witness for Jehovah God, viz., one of Jehovah's witnesses. 'Ye are my witnesses, saith JEHOVAH, that I am God.' (Isaiah 43:10-12) Jehovah's witnesses are commanded by Almighty God to preach, as it is written at Isaiah 61:1, 2, to wit:

> 'The Spirit of JEHOVAH GOD is upon me; because JEHOVAH hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of JEHOVAH, and the day of vengeance of our God; to comfort all that mourn.'

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14 Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His written judgments against "Christendom" 'publicly and throughout every city until the cities are desolate'.—Isaiah 6:11.

To enable appellant (and each one similarly bound in covenant with the Creator) thus effectively to preach the

gospel from house to house throughout the city he uses pamphlets, magazines and books which contain the Bible message. The content of the pamphlets he distributed has been heretofore described. That literature he employs as a substitute for talking or sermons. It is more effective because it can be and is studied by recipients in the quiet of their homes, at their own convenience. Thus much time of both recipient and preacher is saved and more people are served. Appellant's taking of money voluntarily contributed by some who accept literature is *incidental* or collateral to his primary aim and purpose to disseminate information to benefit every person willing to receive such.

Appellant refused to apply for a license because he regarded himself as sent by Jehovah God to do His (the Creator's) work and verily believes that such application *by him* would be an act of disobedience to Jehovah God that would result in his (appellant's) everlasting destruction at the hand of Almighty God.

God's law and the requirements of the covenant into which He has taken His ministers, such as appellant, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by ill-advised men. (Cooley, *Constitutional Limitations*, 8th ed., p. 968) When confronted with inconsistent demands of the two, Jehovah's servants adopt the answer He provided, to wit, "We ought to obey God rather than men." (Acts 5:29) Appellant and other of Jehovah's witnesses desire life, which comes only from Almighty God to those who are wholly obedient to His perfect law. (Psalm 36:9; John 17:3) 'The law of JEHOVAH is perfect, . . . the statutes of JEHOVAH are right, . . . the commandment of JEHOVAH is pure.'—Psalm 19:7, 8.

Jehovah's witnesses, including appellant, are ambassa-

dors for Jehovah's Theocratic Government under the Lord Jesus Christ. (2 Corinthians 5:20; Ephesians 6:20; see also Jeremiah 49:14; Obadiah 1) Hence the State does not and can not have jurisdiction to intervene by application of law or otherwise to encumber, regulate or interfere with the carrying out of their mission as such ambassadors *in the manner* prescribed and directed by Almighty God, JEHOVAH, in His written Word. Consequently appellant cannot apply for a permit or license without violating his conscience and the covenant which binds him to perform the commands of Almighty God. Jehovah says that covenant-breakers are worthy of death. (Romans 1:31, 32) Furthermore, appellant cannot discontinue preaching the gospel as commanded by Almighty God, and he must continue irrespective of persecution (2 Timothy 3:12), or, otherwise, suffer everlasting destruction at the hand of the Most High God, whom he has agreed to obey. (Ezekiel 33:8, 9; Acts 3:22, 23; Jeremiah 26) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked and all who forget Him He will destroy. (Psalm 145:20) Jehovah keeps all His promises.—Isaiah 46:11.

It would be an insult to Almighty God for one of His servants to apply to another human creature for a permit or license to do that which God has commanded His servant to do under pain of everlasting death for refusal or failure so to do.

'Render to Caesar'

The court below *privately* interprets Matthew 22:15-21 to mean that an ordained minister of Jehovah God must stultify his conscience by submitting to the licensing of activity specifically commanded to His ministers by Almighty God in His written Word.

By invoking the counsel given by the Lord Jesus Christ (Matthew 22:15-21), the Arizona Supreme Court thereby judicially brings itself within the purview of the *entire* law

and commandments given by THE Lawgiver (Isaiah 33:22), JEHOVAH GOD, and within the jurisdiction of His appointed and acting Judge, Christ Jesus.—John 5:22, 27.

Almighty God's own interpretation does not support the construction given that Scripture by the Arizona Supreme Court.

On the contrary, said court's construction thereof conflicts with, contradicts, the Creator's own interpretation, and is in direct conflict with His written law, which is supreme.

> "No external authority is to place itself between the finite and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."
>
> *Constitutional Limitations* (Cooley)
> 8th ed., p. 968

> "... Divine Providence ... hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures. ... no human laws should be suffered to contradict these.*" [Italics added]
>
> Blackstone, *Commentaries*
> Chase 3d ed., pp. 5-7

The court below wrongly justified appellee's invasion of appellant's right, by holding that "a preacher" must pay a license tax when he elects to preach by disseminating printed information on the streets and simultaneously receives money contributions to carry forward such work.

Appellee's argument, in effect, interprets *privately* (i.e., for appellee's *purpose* rather than for the purpose

of the Teacher, Christ Jesus) the language of the Lord Jesus—'Render to Caesar things that are his, and to God things which are His' (Matthew 22:21)—to mean that a minister under contract with *the Creator* can be required to violate that contract and his conscience by conforming to the will of *a creature* (i. e., the State) through asking for and obtaining a license before performing acts which *the Creator* in His written Word commands His ministers to do. Because this direct burden violates God's law it cannot be properly deemed one of the demands of "Caesar" to be complied with. *Private* misinterpretation of the Scriptures is 'wresting the Word of God' (2 Peter 3:16); for "no prophecy of the scripture is of any private interpretation". —2 Peter 1:20.

By recording the course of action of His faithful ministers (Hebrews, chapter 11, and other Scriptures), Almighty God has made manifest His interpretation, i. e., the true construction of the Master's words (Matthew 22:21) concerning the obligation of all persons of good-will toward Almighty God with respect to conflicting illegal and wrongful demands of "Caesar". The rule followed by every sincere servant of Jehovah and of Christ Jesus is that such servant willingly and joyfully conducts himself in an upright manner, obeying every law of the land which is not in conflict with JEHOVAH'S law, which is supreme, eternal. This position is exactly like that approved by Blackstone and Cooley. See Blackstone *Commentaries* (Chase, 3d ed.), pages 5-7; Cooley, *Constitutional Limitations*, 8th ed., page 968. As to human demands that conflict with the Creator's perfect commandments to His ministers, the God-given rule is that announced by Jesus Christ's apostle Peter: "We ought to obey God rather than men." "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." —Acts 5:29; Acts 4:19.

True construction of this Scripture (Matthew 22:15-21) by the Lord Jesus Christ Himself is provided in the Sacred

Record, showing unmistakably His own conduct when demanded by the authority of Caesar to discontinue *preaching of the gospel.* The master refused the demand. He emphatically rebuked His accusers, and as a consequence was put to death for His refusal to violate the law of Almighty God.

His apostles, following boldly in the course of Jesus Christ, were similarly arrested and commanded to discontinue *preaching of the gospel;* were mobbed, threatened and beaten for refusing to cease *preaching;* in court were charged with 'turning the world upside down' (Acts 17:6) and advocating a government the king of which is 'one Jesus'. (Acts 25) As to Jesus' disciples when before the courts under such charge it is written (Acts 5:17-41) that they openly said, "We ought to obey God rather than men." Thereafter, as it is written concerning them, "daily in the temple, and in *every house, they ceased not* to teach and preach Jesus Christ." (Acts 5:42) Thus is shown the *true construction* to be placed upon Matthew 22:15-21 as those words of the Master (spoken by Him to His enemies) relate to the God-given duty every ordained minister of Almighty God is obligated to perform in *preaching the gospel* from house to house.

"Freely Give"

The record and the opinion below show that appellant was generous and liberal while preaching the gospel. Appellant offered the literature to every one whom he visited. From some persons who accepted literature he received money contributions, and as to others, "if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge." (Opinion, Arizona Supreme Court.) Thus is shown again that appellant's object was not a commercial one, not a purpose to accumulate pecuniary gain, and not a purpose under which the gospel message was withheld from anyone unable to contribute money to aid in carrying forward appellant's work of preaching.

Jesus Christ's apostle, Paul, defining the principle of God's law expressed in the Scriptures cited by the court below (Revelation 21:6; Revelation 22:17), said that God's minister has a right to expect and accept contributions from any to whom he provides the gospel message. See 1 Corinthians 9:3-27. This is corroborative of the words of Jesus Christ, who said, "The workman is worthy of his meat [maintenance]."—Matthew 10:10, *King James Version* and *Emphatic Diaglott*.

To permit or to encourage application of this type of ordinance to the activity of preaching the gospel is to allow the state to *regulate the church*, which would ultimately permit politicians and others to establish through the state a *state religion*, or through license or taxation to suppress and destroy freedom to worship Almighty God. This would be effected by licensing or taxing the followers of Jesus Christ. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the dark ages from which founders of this "land of liberty" fled during the reign of King George III. All *tendencies* to accomplish a joinder of "church and state", either directly or indirectly (as attempted here against appellant), should be "nipped in the bud". The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in *The Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

Requiring any minister of Almighty God to pay a tax before he preaches by disseminating God's message in printed form (and simultaneously receives money contributions to aid such work) conflicts directly with the law of Almighty God, as well as with the Federal Constitution, because it is a *direct burden*.

A minister of the gospel cannot be licensed to *perform acts* of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers.

The constitutional *right* to serve Almighty God cannot be taxed or licensed. Under existing *American* law, serving God the Creator in conformity with His written commands is not a "privilege" merely, but a *right*.

As construed, the ordinance licenses *acts* of worship; that is to say, preaching the gospel in obedience to God-given command by distributing literature explaining the Bible. To suffer or permit such taxing or licensing is to authorize and encourage an unlawful joinder of "state and church".

The public street is the natural and proper place to preach the gospel *in the manner* done by Jehovah's witnesses. Here, even more particularly, appellant's *way* of worship by preaching the gospel *from house to house* is equally proper. *Schneider* v. *State*, 308 U. S. 147.

Wholly *incidental* to appellant's main activity of preaching the gospel is his taking of money contributions. His activity is not *aimed* or designed to accumulate pecuniary gain. There are no exceptions shown to exist warranting interference, rightly, with appellant's *acts* of worship by application of the ordinance.

The law of Almighty God is supreme, and when a law of the state requires His minister or ambassador to secure a license as a condition precedent to the doing of what Jehovah commands him to do, the minister must obey God and refuse to apply for a license. Should he compromise and secure a license he must suffer everlasting destruction at the hand of Almighty God.

In such a conflicting situation the Constitution requires that ordinances of man (when applied to restrict or prohibit harmless and beneficial *acts*) yield to conscience of the individual molded by Jehovah God and His perfect law.

Admittedly, no clergyman who represents any of the respective religious organizations that function constantly within Casa Grande has ever been required to comply with the ordinance. When such clergyman, in pursuit of

his ecclesiastical profession, receives money from parishioners upon whom he calls at their homes to supply to them prayer books, candles, or other religious paraphernalia commonly and regularly so provided by clergymen he thereby does not qualify as a peddler, subject to being licensed under this ordinance.

Freedom of conscience and of worship are not limited to right of establishment, maintenance and use of an edifice in which to sermonize or from the pulpit of which to harangue the people with vain babblings of politics, society or science falsely so called. That constitutional liberty includes the right of every inhabitant of this land to teach and practice Bible truths by following in the footsteps of Jesus Christ. From *Watson* v. *Jones*, 80 U. S. 679, 728, we quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

The literature in question relates exclusively to Biblical matters, it explains God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled. It shows how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive *act of God* shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the earth, to bring peace, joy, prosperity, happiness and endless life to all survivors of that most ter-

rible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth in obedience to His Government under Christ Jesus.

No part of the content of such literature advocates overthrow of government by force or violence or by unlawful means, nor does it in any way interfere with the governments of various nations of earth, in regard to every one of which governments Jehovah's witnesses are strictly neutral.

Thus it can be readily seen that the literature does not relate to any commercial or selfish subject matter. See R. 34, 36, 37.

The activity of Jehovah's witnesses in demonstrating this literature in the manner that they do is not a competition with any business of the city's local merchants, whom the ordinance is obviously designed to protect.

It is the misconstruction and misapplication of the ordinance which makes it unconstitutional. The undisputed evidence shows that press activity and acts of worship have been encroached upon unlawfully and that petitioners' have been thereby deprived of their liberty constitutionally secured against State invasion.[2]

This type of ordinance has been repeatedly held not to apply to the activity of Jehovah's witnesses because they are ordained ministers of Almighty God, preaching the gospel of His Kingdom. Their taking of money contributions is *incidental* to their main activity and therefore does not constitute peddling of merchandise. Obviously and undeniably, *their* use of the printing press as an adjunct by means of which the gospel message is made suitably and conveniently available to persons willing to receive the same

[2] *Yick Wo* v. *Hopkins*, 118 U. S. 356, 372; *Oney* v. *City of Oklahoma City*, 120 F. 2d 861; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Poindexter* v. *Grunkow*, 114 U. S. 270; *St. Louis I. M. & S. Ry. Co.* v. *Wynne*, 224 U. S. 354; *Kansas City Sou. Ry. Co.* v. *Anderson*, 233 U. S. 325; *Whitney* v. *California*, 274 U. S. 357; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545. See, also, *Hague* v. *C. I. O.*, 101 F. 2d 774, 786; *People ex rel. Doyle* v. *Atwell*, 232 N. Y. 96; 25 A. L. R. 107; 133 N. E. 364.

when distributed in printed form renders such manner of *preaching* none the less an activity entirely *outside* of the "other personal activities" rightly placed within taxing or regulatory field covered by ordinary peddlers' and hawkers' ordinances designed exclusively to govern commercial transactions.[3]

Can Invasion of the Right Be Justified?

The remaining question is whether or not such invasion is justified under the exceptions allowed by the Court in *Watson* v. *Jones*, 80 U. S. 679, 728. No such exceptions appear in this record. Therefore the State Supreme Court had no authority to invade appellant's rights by applying this ordinance.

Appellee, the trial court and the Arizona Supreme Court wrongly contend that appellant was engaged in a *commercial* activity. Not only is there no evidence to support such contention, but it is in total disregard of existing evidence that appellant was preaching the gospel, and "did not *sell*" (R. 34), i.e., did not act for a *commercial* objective, did not aim to acquire pecuniary gain for himself as in conducting a trade or business enterprise.

Wholly *incidental* to appellant's main activity of preaching the gospel is the taking of money contributions. Other courts have specifically found that the taking of money contributions is entirely *incidental*, collateral, to the main purpose of preaching the gospel of God's kingdom, THE THEOCRACY.[4]

[3] *Thomas* v. *City of Atlanta* [Ga.], 1 S. E. 2d 598; *Semansky* v. *Stark*, 199 So. 129; 196 La. 307; *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; *State* [South Carolina] v. *Meredith*, 15 S. E. 2d 678; *Donley* v. *City of Colorado Springs*, 40 F. Supp. 15; *State of Iowa* v. *Mead et al.*, 300 N. W. 523. In each of these cases the activity involved was that of Jehovah's witnesses.

[4] *Donley* v. *City of Colorado Springs*, 40 F. Supp. 15; *Zimmermann et al.* v. *Village of London* (Ohio), 38 F. Supp. 582; *State* [S. Car.] v. *Meredith*, 15 S. E. 2d 678; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Semansky* v. *Stark*, 199 So. 129; *Thomas* v. *Atlanta*, 1 S. E. 2d 598; *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; *State of Iowa* v. *Mead et al.*, 300 N. W. 523. In each of these cases the activity involved was that of Jehovah's witnesses.

Therefore it is submitted that the ordinance of the City of Casa Grande should be held unconstitutional as construed and applied because it denies and deprives appellant of his right of freedom to worship ALMIGHTY GOD.

TWO

The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

A

The fact that literature is sold or that money contributions are accepted simultaneously from some persons receiving literature does not deprive distributor of his constitutional protection. To apply the ordinances in question to literature sold likewise makes it unconstitutional.

B

Streets and residences are the natural and proper places where literature containing information and opinion may be effectively sold or distributed.

C

The facts show that appellant is a distributor, not producer (i.e., printing publisher), of literature containing information and opinion protected by the Constitution, and application to him of the ordinance constitutes and is a *direct burden* upon distribution and amounts to a *tax upon a privilege* and right secured by the Federal Constitution.

D

A statute valid and constitutional becomes invalid when enforced or applied in an unconstitutional manner so as to deny and deprive a person of constitutional rights.

E

The decision of the Arizona Supreme Court holding appellant was not deprived of constitutional rights, is not binding on this court relative to the question of whether the ordinance as construed and applied violates the Federal Constitution. A Federal court is bound to determine questions raised under the Federal Constitution upon *its own judgment* irrespective of the holding of state courts.

F

Exercise of the CIVIL RIGHT of "press activity", as distinguished from exercise of PRIVILEGE competitively to transact commercially gainful business, cannot be licensed or taxed because to permit is to confer the 'power to destroy' the CIVIL RIGHT.

G

The ordinance in question is not regulatory in its aim and nature and is not a general taxing law contemplated by the United States Supreme Court in *Grosjean* v. *American Press Co.*, and is distinguished from decisions relied upon by respondent.

The Arizona Supreme Court has manifestly fallen into the same pit of error as did the appellee and trial court when considering the issues involved as a result of an unsuccessful attempt to jump the broad gap between—

a) police power authorizing taxation, license and regulation of sale of ordinary articles of merchandise upon the streets or from house to house, and

b) the occupation or activity of distributing on streets or at homes of the people literature containing information and opinion (simultaneously inviting and accepting money contributions to aid such work), protected by the Constitution against all sorts of State encroachment.

This gap between the two cannot be bridged or leaped over by law.

The Court's entire decision is based upon the false premise that there is no distinction between "selling" *literature* and selling ordinary articles of merchandise.

It is also based on the assumption that the license tax here is one of the ordinary forms of taxation for support of government, when, as a matter of fact, the ordinance, on its face and as construed and applied, constitutes and is a *direct burden through license tax* upon circulation and distribution—the very life of "freedom of the press".

In all fairness to the court and in the interest of aiding the court in protecting the people of Arizona against the assault against civil liberties made by appellee in its argument below under the guise of innocence, this brief is prepared and filed.

Appellee contends that a proper construction of the ordinance and the activity of appellant is that it covers his activity and that said activity is "selling of merchandise" within the meaning of the ordinance. We submit that the weight of authority cited leads to and compels the opposite conclusion. Indeed this is the only construction that can be given it without having the ordinance come into collision with the Fourteenth Amendment. The only way to save the ordinance is to construe it so as not to cover appellant's activity.

Appellee overlooks entirely the reasoning of this Court in *Schneider* v. *State*, 308 U. S. 147, where Mr. Justice Roberts said:

"... Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

In *Hannan* v. *Haverhill*, 120 F. 2d 87, the court said:

"... Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs."

In the case at bar, the license tax provided for, as applied, is not at all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, 297 U. S. 697, 713-716. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for dealers and for license tax for agents selling merchandise. Pamphlets, periodicals and newspapers are included within the meaning of the term "merchandise" by the trial court.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the 'ordinary forms

of taxation for support of the government', yet a more careful consideration thereof conclusively shows that, according to construction of the Arizona courts, it is adroitly aimed at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

The ordinance is of the common type *prohibiting* peddling and other occupations in the city without a license.

It purports to be a revenue-raising enactment.

Its real aim is, obviously, to *protect* from unwanted competition merchants maintaining locally established businesses. It relates exclusively to commercial enterprises conducted for pecuniary gain. Nevertheless, the ordinance is of the same character as ordinances struck down when applied in other cases where the benevolent, non-commercial, non-competitive activity of Jehovah's witnesses has been involved.

It is a fundamental proposition that freedom of speech, of press and of worship is secured by the due process clause of the Fourteenth Amendment.

The ordinance is not *regulatory* in nature. A licensee having paid the specified fee and so obtained a license would then be free to "peddle" in Casa Grande at any time, in any place, and in any manner, wholly unrestrained by any provision in the ordinance. Manifestly, the power to license conferred thereby is the 'power to destroy'. The licensing authority is arbitrarily and wrongfully vested with the "right" and "duty" to both *let* and *prohibit*.

Streets are natural and proper places for gift distribution or *sale* of literature. In Holy Writ servants of Almighty God are counseled to disseminate right information in such proper places. (See Proverbs 1:20, 21; Luke 13:26; 10:10, 11; 7:11-16.) Restrictions or ordinances such as this Casa Grande ordinance, properly applicable to hawkers and peddlers of ordinary articles of merchandise, are neither appropriate nor available either to prohibit or to regulate

sale or gift distribution of literature on the streets or from house to house. See

Hannan v. City of Haverhill [Mass.],
120 F. 2d 87
Schneider v. State,
supra
Cantwell v. Connecticut,
310 U. S. 296

"As said in *Lovell* v. *City of Griffin*, supra [303 U. S. 444], *pamphlets* have proved most effective instruments in the dissemination of opinion. And perhaps *the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people*. . . . To require a censorship *through license* which makes impossible the free and unhampered distribution [by gift OR SALE] of pamphlets strikes at the very heart of the constitutional guarantees." (Italics added) *Schneider* v. *State*, supra; see, also, *Lovell* v. *City of Griffin*, supra.

The Casa Grande ordinance is used here to encumber "the press" and practically deny distribution. The burden of its provisions falls upon the distributor. It is manifest that the ordinance is *not* regulatory, because one securing a license is then at liberty to go anywhere within the city that he pleases, at any time, and *sell* or give away literature in any manner and without limitation.

A case directly in point is *State of Vermont* v. *Greaves*, 22 A. 2d 497, involving one of Jehovah's witnesses charged under an ordinance identical to the one involved here. The Vermont Supreme Court held that ordinance to be not regulatory, and that as construed and applied the license tax was a direct burden on the exercise of the right of freedom of the press and unlawfully restricted distribution. That court held that for such reasons the ordinance was unconstitu-

tional. We adopt as further argument here the entire opinion by the Vermont Supreme Court.[5]

"Freedom of press" is not confined to distribution of literature free of charge. The constitutional safeguard extends likewise to protect those who *sell* literature, and most certainly includes the right to receive money contributions (tendered by or invited to be given by willing ones receiving literature at the same time) *incidental* to the main activity of preaching the gospel. *Hannan* v. *City of Haverhill*, supra.

In *Commonwealth* [Clearfield, Pa.] v. *Reid et ux.*, 20 A. 2d 841, involving an ordinance very similar to that of Casa Grande, President Judge Keller of Pennsylvania Superior Court said:

> "The historical reference to 'pamphlets' in that [Lovell v. City of Griffin, supra] opinion and in other opinions of that Court (Schneider v. State (Town of Irvington), supra, p. 164; Thornhill v. Alabama, 310 U. S. 88, 97; Grosjean v. American Press Co., 297 U. S. 233, 245-250, etc.) is *not limited to 'pamphlets' which are distributed without cost.* Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the Grosjean case, were not for the most part circulated gratis, but were distributed to subscribers or *sold.*" [Italics added]

See, also, *The Encyclopædia Britannica*, Vol. 20, Pamphlets, pp. 659-660.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in

[5] See pages 23 to 26 of Petitioners' Brief filed in this Court, cause No. 314, October Term 1941, *Bowden et al.* v. *City of Fort Smith, Arkansas.*

its historic connotation *comprehends every sort of publication which affords a vehicle of information and opinion.*" (Italics added) *Lovell* v. *City of Griffin*, supra.

It is of vital importance to protect the essential liberty of freedom of the press and freedom to worship Almighty God, from every sort of infringement.

Appellant's freedom to worship Almighty God has likewise been abridged and denied by appellee. *Cantwell* v. *Connecticut*, supra.

There are many other cases involving Jehovah's witnesses in which application of ordinances similar to the Casa Grande ordinance has been held unconstitutional.[6]

The case of *City of Blue Island* v. *Kozul et al.* was decided by the Illinois Supreme Court March 17, 1942, reversing a conviction under an ordinance identical to that here involved. That court said:

> "The parts of the ordinance material to the questions here involved are as follows: 'Section 1. Definition of Peddler—Peddlers required to be Licensed. That every person, firm or corporation who shall sell or offer for sale, barter or exchange at retail any goods, wares or merchandise of any kind whatsoever, by traveling from place to place in, along and upon any of the streets of the city of Blue Island . . . whether to regular customers or not, shall be deemed a peddler and shall before engaging in said business, obtain a license as a peddler as hereinafter provided.' . . .

[6] *Commonwealth* [City of Coatesville, Pa.] v. *Schuman* [Schieman] (January 29, 1937), *very specially noteworthy*, 189 A. 503; 125 Pa. Superior Ct. 62; *State* [Fla.] *ex rel. Wilson* v. *Russell*, 1 So. 2d 569, *particularly* opinion of Chapman, J., specially concurring; *State* [Fla.] *ex rel. Hough* v. *Woodruff*, 2 So. 2d 577; *Kennedy* v. *City of Moscow* [Idaho], 39 F. Supp. 26; *Donley* v. *City of Colorado Springs*, supra; *Zimmermann* v. *Village of London* [Ohio], 38 F. Supp. 582; *South Holland* (Village of) v. *Stein*, 26 N. E. 2d 868; 373 Ill. 472; *State of Vermont* v. *Greaves*, supra; *City of Blue Island* v. *Kozul et al.*, ... N. E. 2d ..... (decided March 17, 1942, Illinois Supreme Court).

"The magazines sold by the defendant would come within the term 'goods, wares and merchandise' used in the ordinance. *Village of South Holland* v. *Stein*, 373 Ill. 472. . . .

"Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell* v. *City of Griffin, supra; Schneider* v. *Town of Irvington, supra; Grosjean* v. *American Press Co., supra; Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. ed. 1213; *Hague* v. *C. I. O.*, 307 U. S. 496, 83 L. ed. 1423. . . .

"The ordinance of the city of Blue Island, as applied to the defendant, can not be sustained as a revenue measure. The United States Supreme Court in *Grosjean* v. *American Press Co., supra*, reviews the history of the long struggle which took place in England between the government and the proponents of a free press. The methods anciently used to control the press were censorship, license and taxation. It is obvious that through license and taxation, as well as by censorship, freedom of speech and of the press can be effectively curtailed and even denied. . . . The framers of the first amendment to the United States Constitution were familiar with the long struggle of the press in England to be rid of the license taxes and the stamp taxes imposed by the government to curtail and limit the freedom of the press, and the first amendment prohibits any form of restraint on the publication or circulation of printed matter.

". . . Liberty of circulating is as essential as to the freedom of the press as liberty of publishing. Without circulation the publication would be of little value. (*Ex parte Jackson*, 96 U. S. 727, 24 L. ed. 877.) The license tax in the *Grosjean case* was held invalid be-

cause of its direct tendency to restrict circulation.'

". . . The right to freely print and circulate applies not only to printed matter circulated without charge to the recipients, but it also applies when a charge is made for it. (*Grosjean* v. *American Press Co., supra; Lovell* v. *City of Griffin, supra.*) . . .

"The city contends that in some of the cases cited the ordinance provided for censorship through licenses or permit and gave the certifying officer the power to reject or deny the application at his discretion on consideration of the moral character of the applicant or the nature of his project, whereas, the ordinance of the city of Blue Island did not provide for censorship but gave the applicant a right to a license on payment of the required fee. It can, however, make no difference whether the ordinance provides for censorship through licenses and permit or whether the ordinance merely provides a license fee or license tax on the privilege of publishing and circulating printed matter. In either event the effect is that there is an abridgement of the freedom of the press.

"The publishers and distributors of newspapers, magazines, pamphlets, circulars, books or other printed matter are not immune from the ordinary forms of taxation for the support of the government, but they can not be compelled to purchase, through a license fee or a license tax, the privilege freely granted by the constitution. . . .

"The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island. The defendant's right to a license on the payment of the required fee or tax was absolute. If the defendant paid the $25 for a year, or $4 for a day and so obtained the license she would then have been free to peddle the magazines in the city of Blue Island during the paid license period

at any time, in any place and in any manner, wholly unrestricted by any provision in the ordinance. Her freedom to peddle the magazines would then be as complete as though the ordinance did not exist. The ordinance is purely a fee or tax measure, and under the circumstances in this case its effect is to compel the defendant to pay a fee or tax of $25 per year or $4 per day to exercise a privilege freely guaranteed to her by the constitution of the United States as well as by the constitution of this State. That this ordinance as applied to the facts in this case would operate as a restraint upon the circulation of the magazines in question is self-evident. If the defendant should be unable to pay the required fee or tax, circulation and distribution on the streets of Blue Island was prohibited and denied. *Grosjean* v. *American Press Co., supra.* . . . "

Here, too, the burden is imposed upon the "distribution" or "circulation" end of publication which, under the constitutional protection, is intended to be left unhampered and unrestrained by all forms of license and permit laws. Under the Casa Grande ordinance, every newsboy or other person distributing any pamphlet, book or periodical is required to pay the license fee.

The license fee imposed is *not for the purpose of regulating* and paying necessary expense incidental to use of the streets, as was the *parade* license fee in *Cox* v. *New Hampshire*, 312 U. S. 569. There the fee collected was used in providing policing of *parades*. Here, however, no such aim or purpose exists. Here, ostensibly, the object appears to be *revenue raising*, but, really, the aim, purpose and *effect* or result is destruction of distribution or circulation, because the burden of tax is placed on the distributor.

Suppose a citizen interested in good government found that administration of officials in Casa Grande were corrupt and incompetent, and he desired to print a pamphlet making known such fact for the purpose of effecting

a change of administration. If he prepared such a pamphlet and distributed it, either *gratis* or for a small charge, he would be required to get a license, and on failure to do so could be prosecuted and convicted.

Let us say that Nazis, Fascists and Japs were moving in secret to invade the borders of Arizona, and some good citizen learning this fact printed millions of pamphlets or leaflets for distribution throughout Arizona. In Casa Grande, under this ordinance, both he and every loyal citizen aiding him to distribute such printed matter could be convicted for their failure to pay the tax and secure a license. A modern-day Tom Paine or John Milton could not safely function with his pamphlets in Casa Grande.

The tax here in question directly encumbers and smothers distribution and circulation of literature; and if held to be valid, it could be used to destroy circulation. This is plain enough when we consider that if it were increased to a high degree, as it could be (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45, and cases cited), it well might result in completely suppressing both distribution and even publishing to point of destruction.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 et seq.

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay a huge sum to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay nothing. The unreasonableness of the ordinance license tax is manifest.

Therefore the argument and contention on the part of

appellee that appellant's main activity is peddling for profit is without support in law or fact and should be rejected.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin*, 303 U. S. 444. In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. 2d 41, Judge Rothenberg said:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling a pamphlet on the public streets* and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:
>
> > 'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation.'
>
> "Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale of pamphlets on the streets* has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code [City of New

York] permits free distribution of literature *on the public streets without restriction.* Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in *destroying circulation*'." [Italics added]

In *People* v. *Finkelstein*, 2 N. Y. S. 2d 941, also it was held that license tax ordinances of the City of New York very like the questioned license ordinance were unconstitutional as construed and applied to street distribution of literature.

Appellee and the court below cite and rely upon *Giragi et al.* v. *Moore et al.*, 58 P. 2d 1249, 64 P. 2d 819, 301 U. S. 670. This is not in point because there the tax involved was a general sales tax of one percent of gross proceeds of sales or gross income of business of everyone in the state engaged in "newspaper" business. Many other businesses were similarly taxed on different proportions. The tax there involved, as well as that questioned in *Arizona Pub'g Co.* v. *O'Neil*, 22 F. Supp. 117, aff'd 304 U. S. 543, came within the general form of taxes for the purpose of support of government said to be applicable to newspapers in the *dictum* in *Grosjean* v. *American Press Co.*, supra, and in *Associated Press* v. *National Labor Rel. Bd.*, 301 U. S. 103, 133. Such tax was not directed at and was not a direct burden upon distribution of opinion or pamphleteering as such has been applied in this case by the construction placed on the ordinance by the Arizona Supreme Court.

Any attempt to tax the exercise of such right would,

therefore, be a tax on a privilege (distribution or dissemination of opinion) guaranteed by the United States Constitution, and thus be invalid. See *Colgate* v. *Harvey*, 296 U. S. 404; *Crandall* v. *Nevada*, 6 Wall. 35.

Cases relied on by appellee in justifying the decision below involved general taxes and licenses affecting the gross proceeds of newspaper business, which tax and licensing provisions were not directed at, or a direct burden on, distribution of literature, or calculated on the basis of circulation; but which were entirely incidental and collateral thereto.

Here the license tax throws the burden on the distributor and is a direct encumbrance upon circulation.

The license tax here cannot be distinguished from the type of law requiring a permit from a police chief or other authorized official in whom is vested discretion to grant or refuse the permit. This character of law is admittedly unconstitutional. See *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *State*, 308 U. S. 147. The same prohibitive result or evil can be and is reached under the license tax law here through increasing the license fee so as to make it impossible for all, except the ultrarich, to exercise constitutional rights guaranteed to everyone. Thus the right of liberty and freedom secured to all by the Constitution would become the prerogative of the wealthy.

Indeed, one might be too poor to pay even the smallest possible license fee that may be fixed, and thus, by reason of his poverty, be refused the rights guaranteed him under the Constitution. The exercise of rights so vital to the maintenance of democratic principles is not and cannot be made dependent upon one's ability to raise sufficient funds wherewith to pay a license tax fee as a condition precedent to the exercise thereof. To thus hold might and would deprive large segments of the population of the guarantee of their freedom. The results would be a substantial dissolution of the rights of the people and a serious impairment of equality of the inhabitants of this land, and would make indigence

a basis for restricting freedom of civil rights.

The ordinance questioned here permits the people, in the exercise of their constitutional rights, to be divided into two classes: one class with worldly riches free to exercise the right of freedom of press and worship according to the dictates of conscience, and another class that is poverty-stricken to the point of being unable to purchase the required license to exercise their vital rights. Thus the ordinance is at war with the Constitution and is a short-sighted blow at the security of the people's liberties.

Laws which make unlawful the bringing of indigents into a state are unconstitutional and void. See *Edwards* v. *California*, 314 U. S. 160, 182-186; 62 S. Ct. 164, 166-170. The principle announced in that case makes such, by analogy, authority for appellant here.

Like "Free Commerce"

The license tax here applied to the exercise of an admitted constitutional right can be likened to the various kinds of taxes that have been knocked down as being unconstitutional burdens upon interstate commerce.

Appellant does not and can not rely upon the interstate commerce clause itself. However, by analogy, appellant's exercise of the rights of "free press" and "worship" is entitled to *equal protection* against any direct-tax burden, even as the right of "free commerce between the states".

The courts have held to be bad taxes and license fees constituting a direct burden against interstate commerce. Such cases, by analogy, show that a similar tax, which directly burdens the exercise of freedom of press and worship, is likewise bad.

This Court has declared often that license-tax laws and peddlers' license ordinances similar to the one here involved are unconstitutional when construed and applied to cover peddlers or agents selling from house to house or on the streets merchandise shipped from another state.

See *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell et al.* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128; and *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336.

In these trying hours this Court will be equally as hasty and astute to protect the rights under the "Bill of Rights" and the Fourteenth Amendment to the Constitution as it is in sustaining the commerce clause, especially when human rights are threatened, as here, with destruction by the direct burdening of circulation and distribution, the very life of "free press".

Appellee says that because the state courts have passed on the validity of this and similar ordinances that this court and other federal courts do not have the right to reach a contrary conclusion or enjoin the enforcement. We call attention to the fact that the New Jersey Supreme Court had passed on and approved the validity of the ordinance involved in the *Hague* case before the injunction suit was brought. This was a basis for an injunction rather than ground for denial. Such a holding constitutes a denial of constitutionally secured "civil rights". (See statement in footnote 23 of the opinion of Mr. Justice Roberts in the *Hague* case.) The courts of the States are not the sole custodians of the Constitution; and when any state court misconstrues the United States Constitution such court's holding is not binding upon any federal court called upon to "redress" the deprivation of civil rights by state courts.

It is a fundamental rule that the question of construction of a statute or ordinance and definition of its terms is for the State courts to determine and when they have construed the enactment such construction is binding upon the federal court. This rule is well settled and does not require citation of authority.

But *where a federal question is involved* the federal courts are not bound by the construction given the statute or ordinance by a state court.

Here a federal question is involved. This federal court cannot be forced to follow the arbitrary ruling of any state court that 'there is no federal question'.

The fact that there is a federal question causes the exception to the above rule. This Court must now determine whether the ordinance is unconstitutional and contrary to the Fourteenth Amendment as construed and applied by appellee.

In proof that the foregoing paragraph correctly states the rule, see *Scott* v. *McNeal*, 154 U. S. 34; *New Jersey* v. *Anderson*, 203 U. S. 483; and *Lindsey* v. *Washington*, 301 U. S. 397.

It has been clearly stated and held by this Court that it is not concerned with characterization or construction of state legislation by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state in light of the Federal Constitution.[7]

The ordinance is also void because it vests arbitrary and discriminatory power in the licensing authority of the City of Casa Grande. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 372.

It is submitted that the ordinance as construed and applied violates Section 1 of the Fourteenth Amendment to the United States Constitution because it denies and deprives appellant of his right of freedom of the press.

[7] *Corn Prod. Ref'g Co.* v. *Eddy*, 249 U. S. 427; *St. L. & S. W. Ry. Co.* v. *Arkansas*, 235 U. S. 350; *K. City & Ft. Smith Ry. Co.* v. *Botkin*, 240 U. S. 227, 231; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237.

Conclusion

Among the oldest cases on the precise point now before this Court is the one recorded in the Bible book of Acts of the Apostles, chapter 5, beginning at verse twenty-six. Disciples of Jesus Christ were publicly informing the people, disseminating the truths of the Word of Almighty God in obedience to His command. Religionists were grieved and angered because God's truth was being proclaimed. The clergy and other religionists conspired against the publishers of the truth. Those conspirators instigated the arrest of the disciples, who were haled into the judgment hall. A high Roman court then sitting in Palestine heard that case. After hearing the evidence, one of the members of that court, Gamaliel, a learned counselor, arose and, addressing his fellow members of the court and all present, said:

> "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

This temperate and salubrious principle all right-minded persons always follow.

The Most High God, JEHOVAH, Himself counsels:

> 'Now therefore be wise, O ye kings: be instructed, ye judges of the earth. Serve JEHOVAH with fear,

and rejoice with trembling. Kiss His Son, THE KING Christ Jesus, lest He be angry, and ye perish in the way, for His wrath will soon be kindled. Happy are all they that take refuge in Him.'—Psalm 2: 10-12, *American Revised Version.*

This Court should reverse the judgment of the Arizona Supreme Court and order the appellant discharged, we confidently submit.

HAYDEN COVINGTON
Attorney for Appellant